

UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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## HARVEY DEANDRE MCDANIELS.

Case No. 3:20-cv-00692-MMD-CLB

**Petitioner,**

v.

WARDEN GITTERE, et al.

## ORDER

## Respondents.

11 Petitioner Harvey Deandre McDaniels, a Nevada prisoner, has submitted a petition  
12 for writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 1.) Petitioner has not filed an  
13 application to proceed *in forma pauperis* or paid the filing fee. Accordingly, this matter has  
14 not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local Rules LSR 1-1, 1-2.

15 The Court will therefore dismiss Petitioner's habeas petition without prejudice. If  
16 Petitioner wishes to refile, he must submit a new habeas petition pursuant to 28 U.S.C.  
17 § 2254 on the form required by this court in a new action with either the \$5.00 filing fee  
18 or a completed action to proceed *in forma pauperis*, completed on the proper form, with  
19 both an inmate account statement for the past six months and a properly executed  
20 financial certificate.

21 This is not petitioner's first failure to properly commence a habeas corpus matter.  
22 The court dismissed *McDaniels v. Nevada Dept. of Corrections*, Case No. 3:20-cv-00623-  
23 LRH-CLB, for the same reason.

24 It therefore is ordered that this action is dismissed without prejudice to the filing of  
25 a petition in a *new* action with either the \$5.00 filing fee or a properly completed  
26 application form to proceed *in forma pauperis*.

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1        It further is ordered that a certificate of appealability is denied, as jurists of reason  
2 would not find the court's dismissal of this improperly commenced action without prejudice  
3 to be debatable or incorrect.

4        The Clerk of Court is directed to send petitioner two copies each of an application  
5 form to proceed *in forma pauperis* for incarcerated persons and a noncapital § 2254  
6 habeas petition form, one copy of the instructions for each form, and a copy of the papers  
7 that he submitted in this action.

8        The Clerk of Court is further directed to enter judgment accordingly and close this  
9 case.

10      DATED THIS 15<sup>th</sup> Day of December 2020.

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13      MIRANDA M. DU  
14      CHIEF UNITED STATES DISTRICT JUDGE

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